



PATENT
Customer No. 22,852
Attorney Docket No. 05725.0980-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Gilles RUBINSTENN et al.) Group Art Unit: 3628
)
Application No.: 10/024,496) Examiner: Igor N. BORISSOV
)
Filed: December 21, 2001)
)
For: BEAUTY ADVISORY SYSTEM) Confirmation No.: 4463
AND METHOD)

Attention: Mail Stop Appeal Brief-Patents

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Pursuant to 37 C.F.R. § 41.41, Appellants submit this Reply Brief in response to the Examiner's Answer dated January 22, 2010.

If any additional fees are required in connection with the filing of this Reply Brief, Appellants request that the required fees be charged to Deposit Account No. 06-0916.

TABLE OF CONTENTS

I.	Status Of Claims	5
II.	Grounds of Rejection.....	6
III.	Argument In Reply	7
A.	Rejection Under 35 U.S.C. § 102(a) Over <i>Maloney</i>	7
1.	Claims 25 and 26	
	a. The Examiner's attempt to equate "accessing local information for the geographic area" to providing a test kit to test for environmental information, as disclosed by <i>Maloney</i> , is without basis.	7
B.	Rejection Under 35 U.S.C. § 103(a) Based On <i>Maloney</i> and <i>Fox</i>	8
1.	Claims 1–9, 11–13, 17, 18, 20–24, 30, 31, and 48	
	The Examiner has provided no proper rationale to modify <i>Maloney</i> with <i>Fox</i> to yield a method that comprises "generating . . . at least one recommendation for use of at least one cosmetic product based on at least the personal information and the local information," which is determined based on demographic information, as recited in claim 1.....	8
2.	Claim 27	
	<i>Maloney</i> and <i>Fox</i> fail to teach or suggest "memory for storing a program that accesses local information . . . and generates at least one recommendation for use of at least one cosmetic product, the at least one recommendation being a function of the personal information of the subject and the local information," as recited in claim 27.....	9
3.	Claims 32 and 34–40	
	Even if there were to be motivation to combine <i>Maloney</i> and <i>Fox</i> (with which Applicants do not agree), the combination would not yield generating a plurality of differing cosmetic product usage recommendations, each recommendation being a function of local information that includes a weather forecast, as recited in claim 32.	10
4.	Claims 41 and 42	

	The Examiner has provided no proper rationale to modify <i>Maloney</i> with <i>Fox</i> to yield a method that comprises "generating, by the computer system, at least one recommendation for use of at least one cosmetic product based on [local] information [obtained by manipulating demographic data]," as recited in claim 41.	11
5.	Claims 43–47	
	Applicants submit no additional arguments in reply to this rejection.	11
6.	Claims 49 and 50	
	The Examiner has provided no proper rationale to modify <i>Maloney</i> with <i>Fox</i> to yield a method that comprises generating at least one recommendation for use of at least one cosmetic product based on at least one of personal information, which includes demographic information reflecting a geographic area location of a subject, and local information, which is based on the demographic information and historical information associated with the geographic area, as recited in claim 49.	11
C.	Rejection Under 35 U.S.C. § 103(a) Based On <i>Maloney</i> , <i>Fox</i> , and <i>Anderson</i>	12
1.	Claim 10	
	Applicants submit no additional arguments in reply to this rejection.	12
D.	Rejection Under 35 U.S.C. § 103(a) Based On <i>Maloney</i> , <i>Fox</i> , and <i>Farchione</i>	12
1.	Claims 14–16, 28, 29, and 33	
	Applicants submit no additional arguments in reply to this rejection.	12
E.	Rejection Under 35 U.S.C. § 103(a) Based On <i>Maloney</i> , <i>Fox</i> , and Official Notice	13
1.	Claim 19	
	The allegation that consumers use cosmetic products daily does not support the assertion that it was well known to	

suggest that the subject maintain a stock of the plurality of
cosmetic products, as recited in claim 19. 13

IV. Conclusion.....14

I. STATUS OF CLAIMS

Claims 1-50 have been finally rejected and are subject to this appeal.

II. GROUNDS OF REJECTION

In the Examiner's Answer mailed January 22, 2010, the Examiner withdrew the rejection of claims 1–11, 13–16, 18–25, 32–39, 41, 43, 44, and 46–50 under 35 U.S.C.

§ 101. The remaining grounds of rejection are listed below:

A. Claims 25 and 26 stand rejected under 35 U.S.C. § 102(a) based on WO 01/18674 ("*Maloney*"). *Final Office Action* at 3, 4.

B. Claims 1–9, 11–13, 17, 18, 20–24, 27, 30–32, and 34–50 stand rejected under 35 U.S.C. § 103(a) based on *Maloney* and U.S. Patent No. 5,796,932 ("*Fox*"). *Id.* at 4–17; *Advisory Action*, 2 (June 15, 2009).

C. Claim 10 stands rejected under 35 U.S.C. § 103(a) based on *Maloney*, *Fox*, and U.S. Patent Application Publication No. 2002/0082869 ("*Anderson*"). *Final Office Action* at 18.

D. Claims 14–16, 28, 29, and 33 stand rejected under 35 U.S.C. § 103(a) based on *Maloney*, *Fox*, and U.S. Patent Application Publication No. 2002/0059248 ("*Farchione*"). *Id.* at 18–20.

E. Claim 19 stands rejected under 35 U.S.C. § 103(a) based on *Maloney*, *Fox* and Official Notice. *Id.* at 20, 21.

III. ARGUMENT IN REPLY

A. Rejection Under 35 U.S.C. § 102(a) Over *Maloney*

1. Claims 25 and 26

- a. **The Examiner's attempt to equate "accessing local information for the geographic area" to providing a test kit to test for environmental information, as disclosed by *Maloney*, is without basis.**

On page 23 of the Examiner's Answer, the Examiner alleges that Applicants' Specification defines "accessing local information for the geographic area" as follows:

The local information may be determined in a variety of ways, including electronically and manually.

Specification, ¶ 25 (corresponds to paragraph [0027] of U.S. Published Patent Appl. No. 2003/0064350 cited by the Examiner) (emphasis added by the Examiner). Based on this alleged definition, the Examiner alleges that *Maloney's* disclosure of providing a test kit to test for environmental information purportedly corresponds to "accessing local information for the geographic area," as recited in claim 25. The Examiner is in error.

The above quoted text from Applicants' Specification does not provide a definition of the word "access." Indeed, the word "access" is not even mentioned in the quoted text. Further, nothing in Applicants' Specification defines the word "access" to mean providing a test kit to test for environmental information. Thus, there is no basis for the Examiner to allege that *Maloney* purportedly discloses "accessing local information for the geographic area." Testing for environmental information, as disclosed by *Maloney*, is not the same as and is not consistent with "accessing local information for the geographic area."

B. Rejection Under 35 U.S.C. § 103(a) Based On *Maloney* and *Fox*

1. Claims 1–9, 11–13, 17, 18, 20–24, 30, 31, and 48

The Examiner has provided no proper rationale to modify *Maloney* with *Fox* to yield a method that comprises “generating . . . at least one recommendation for use of at least one cosmetic product based on at least the personal information and the local information,” which is determined based on demographic information, as recited in claim 1.

On page 27 of the Examiner's Answer, the Examiner alleges that the motivation to combine *Maloney* and *Fox* would be to “utiliz[e] local actual and forecasted weather information (e.g., temperature and humidity) in planning sales and advertising of personal care products to maximize profits.” However, even if this were true (which Applicants do not concede), it would only yield the combination of identifying consumer profile data to customize a selected product to meet the consumer's physiological and environmental conditions, as disclosed in *Maloney*, and depicting the effect of weather variables on sales for the product at a particular location for a particular time period, as disclosed in *Fox*. This is not the same as and does not suggest generating at least one recommendation for use of at least one cosmetic product based on at least personal information and local information, which is determined based on demographic information, as recited in claim 1. Accordingly, the Examiner has not provided any proper rationale to modify *Maloney* with *Fox* to yield a method that comprises the “generating” feature of claim 1 and its dependent claims 2–9, 11–13, 17, 18, 20–24, 30, 31, and 48.

2. Claim 27

***Maloney* and *Fox* fail to teach or suggest “memory for storing a program that accesses local information . . . and generates at least one recommendation for use of at least one cosmetic product, the at least one recommendation being a function of the personal information of the subject and the local information,” as recited in claim 27.**

On page 27 of the Examiner's Answer, the Examiner alleges that *Maloney* purportedly discloses “memory for storing a program that accesses local information . . . and generates at least one recommendation for use of at least one cosmetic product, the at least one recommendation being a function of the personal information of the subject and the local information,” as recited in claim 27. For reasons similar to the ones discussed above on page 7 for the claim element “accessing local information for the geographic area” in claim 25, *Maloney* also fails to disclose “memory for storing a program that accesses local information,” as recited in claim 27.

On pages 29 and 30 of the Examiner's Answer, the Examiner alleges that the motivation to combine *Maloney* and *Fox* would be to “utiliz[e] local actual and forecasted weather information (e.g., temperature and humidity) in planning sales and advertising of personal care products to maximize profits.” However, even if this were true (which Applicants do not concede), it would only yield the combination of identifying consumer profile data to customize a selected product to meet the consumer's physiological and environmental conditions, as disclosed in *Maloney*, and depicting the effect of weather variables on sales for the product at a particular location for a particular time period, as disclosed in *Fox*. This is not the same as and does not suggest “memory for storing a program that accesses local information . . . and generates at least one recommendation for use of at least one cosmetic product, the at least one

recommendation being a function of the personal information of the subject and the local information," as recited in claim 27. Accordingly, the Examiner has not provided any proper rationale to modify *Maloney* with *Fox* to yield the system of claim 27.

3. Claims 32 and 34–40

Even if there were to be motivation to combine *Maloney* and *Fox* (with which Applicants do not agree), the combination would not yield generating a plurality of differing cosmetic product usage recommendations, each recommendation being a function of local information that includes a weather forecast, as recited in claim 32.

On page 30 of the Examiner's Answer, the Examiner alleges that Applicants' "arguments are directed against the reference individually[,] but one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." Applicants, however, directly addressed the rejection based on a "combination of references." Specifically, Applicants noted the following at page 26 of the Appeal Brief (citations omitted):

The Examiner . . . asserts that it would have been obvious to modify *Maloney* with the disclosure of *Fox* because "it would advantageously allow [one] to utilize forecasted weather conditions (e.g., temperature and humidity) in planning of sales and advertising of personal care, thereby maximiz[ing] profits." However, even if this were true, it would only yield the combination of identifying consumer profile data to customize a selected product to meet the consumer's physiological and environmental conditions and depicting the effect of weather variables on sales for the product at a particular location for a particular time period. This is not the same as generating a plurality of differing cosmetic product usage recommendations, each recommendation being a function of local information that includes a weather forecast, as recited in claim 32.

4. Claims 41 and 42

The Examiner has provided no proper rationale to modify *Maloney* with *Fox* to yield a method that comprises “generating, by the computer system, at least one recommendation for use of at least one cosmetic product based on [local] information [obtained by manipulating demographic data],” as recited in claim 41.

On pages 33 and 34 of the Examiner’s Answer, the Examiner alleges that the motivation to combine *Maloney* and *Fox* would be to “utiliz[e] local actual and forecasted weather information (e.g., temperature and humidity) in planning sales and advertising of personal care products to maximize profits.” However, even if this were true (which Applicants do not concede), it would only yield the combination of identifying consumer profile data to customize a selected product to meet the consumer’s physiological and environmental conditions, as disclosed in *Maloney*, and depicting the effect of weather variables on sales for the product at a particular location for a particular time period, as disclosed in *Fox*. This is not the same as and does not suggest “generating, by the computer system, at least one recommendation for use of at least one cosmetic product based on [local] information [obtained by manipulating demographic data],” as recited in claim 41.

5. Claims 43–47

Applicants submit no additional arguments in reply to this rejection.

6. Claims 49 and 50

The Examiner has provided no proper rationale to modify *Maloney* with *Fox* to yield a method that comprises generating at least one recommendation for use of at least one cosmetic product based on at least one of personal information, which includes demographic information reflecting a geographic area location of a subject, and local information, which is based on the demographic information and historical

information associated with the geographic area, as recited in claim 49.

On page 37 of the Examiner's Answer, the Examiner alleges that the motivation to combine *Maloney* and *Fox* would be to "utiliz[e] local actual and forecasted weather information (e.g., temperature and humidity) in planning sales and advertising of personal care products to maximize profits." However, even if this were true (which Applicants do not concede), it would only yield the combination of identifying consumer profile data to customize a selected product to meet the consumer's physiological and environmental conditions, as disclosed in *Maloney*, and depicting the effect of weather variables on sales for the product at a particular location for a particular time period, as disclosed in *Fox*. This is not the same as and does not suggest generating at least one recommendation for use of at least one cosmetic product based on at least one of personal information, which includes demographic information reflecting a geographic area location of a subject, and local information, which is based on the demographic information and historical information associated with the geographic area, as recited in claim 49.

C. Rejection Under 35 U.S.C. § 103(a) Based On *Maloney*, *Fox*, and *Anderson*

1. Claim 10

Applicants submit no additional arguments in reply to this rejection.

D. Rejection Under 35 U.S.C. § 103(a) Based On *Maloney*, *Fox*, and *Farchione*

1. Claims 14–16, 28, 29, and 33

Applicants submit no additional arguments in reply to this rejection.

E. Rejection Under 35 U.S.C. § 103(a) Based On *Maloney, Fox*, and Official Notice

1. Claim 19

The allegation that consumers use cosmetic products daily does not support the assertion that it was well known to suggest that the subject maintain a stock of the plurality of cosmetic products, as recited in claim 19.

On page 43 of the Examiner's Answer, the Examiner alleges that "documentary evidence" purportedly supports the Official Notice that "it was old and well known that a plurality of consumers had a habit of using a cosmetic product every day." However, even if it were allegedly well known that "a plurality of consumers had a habit of using a cosmetic product every day," the Examiner failed to establish any alleged obviousness of claim 19 as a whole, including the "suggesting" feature. Specifically, the allegation that consumers had a habit of using cosmetic products daily does not support the assertion that it was allegedly well known to suggest that the subject maintain a stock of a plurality of cosmetic products, as recited in claim 19. For at least the foregoing reasons, the Examiner has failed to meet his burden to establish a *prima facie* case of obviousness.

IV. CONCLUSION

For the above reasons and the reasons stated in Applicants' Appeal Brief of October 14, 2009, all of the claim rejections are erroneous and reversal of the rejections is respectfully requested.

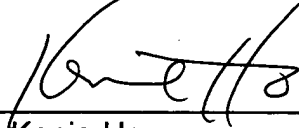
If any additional fees are required in connection with the filing of this Reply Brief, Applicants request that the required fees be charged to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 22, 2010

By: _____


Kenie Ho
Reg. No. 51,808